UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

RICHARD DALE TURNER,

Plaintiff,

v. **Civil Action No. 2:16-cv-04346**

WEST VIRGINIA REGIONAL JAIL AUTHORITY,
C.O. PERRY, C.O. ALLEN, C.O. HOLIDAY,
Sgt. TONEY, AND MEDICAL STAFF,

Defendants.

ORDER

Pending are the motion to dismiss by defendants Holiday and Toney for lack of service, filed on March 17, 2017, and the motion to dismiss by defendant West Virginia Regional Jail Authority, filed on March 23, 2017.

This matter having been referred to United States Magistrate Judge Dwane L. Tinsley pursuant to 28 U.S.C. § 636(b)(1)(B), he filed his Proposed Findings and Recommendation ("PF&R") on these two motions on January 9, 2018. Magistrate Judge Tinsley recommends that the individual defendants' motion be denied as moot, inasmuch as they have since been properly served, and that the jail authority's motion be granted, among other reasons, because it is not a "person" that can be sued under 42 U.S.C. § 1983 and is immune from a suit for damages under the Eleventh Amendment of the United States Constitution. During a motions hearing before the magistrate judge, plaintiff agreed to the dismissal of the jail authority from the suit.

No objections having been filed to the PF&R, the parties have waived de novo review by this court. Accordingly, it is ordered as follows:

1. That the PF&R be, and it hereby is, adopted and incorporated in full herein.
2. That the motion to dismiss by C.O. Holiday and Sgt. Toney be, and it hereby is, denied as moot.
3. That the motion to dismiss by the West Virginia Regional Jail Authority be, and it hereby is, granted.
4. That the West Virginia Regional Jail Authority be, and it hereby is, dismissed from this action.

The matter continues to be referred to Magistrate Judge Tinsley as to the remaining defendants. The Clerk is requested to transmit copies of this order to plaintiff, all counsel of record, and United States Magistrate Judge Dwane L. Tinsley.

DATED: February 28, 2018

John T. Copenhaver, Jr.
United States District Judge